

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	:	Examiner: Kishin G. Belani
Hiroaki TAMAI	)	
	:	Group Art Unit: 2443
Application No.: 10/567,589	)	
	:	Confirmation No.: 2485
Filed: February 6, 2006	)	
	:	
For: METHOD AND DEVICE	)	
STATIC INFORMATION	:	
CONCERNING A DEVICE BY A	)	
USER POLICY	:	September 6, 2011

Mail Stop **AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW AND**  
**PETITION FOR EXTENSION OF TIME**

Sir:

Applicants petition to extend the time for response to the April 6, 2011 final Office Action to September 6, 2011. Please charge Deposit Account 50-1214 for payment of the extension fee. Any additional fee required, and any overpayments, should also be charged to Deposit Account No. 50-1214.

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated on the attached pages 2-6.

### **PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Reconsideration and allowance of the subject application are respectfully requested.

Claims 1-2, 7-9 and 14 are pending in the application. Claims 1 and 8 are independent.

Claims 1-2, 7-9, and 14 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Mimura et al. (U.S. 6,847,613) in view of Wakayama et al. (U.S. 2004/0136368 A1) and further in view of Na et al. (U.S. 2002/0165949 A1).

On page 4 of the April 6, 2011 Office Action, the Examiner alleges that Mimura discloses “statistic information of the pattern extracted from the received packets” as recited in claim 1 and, in support, cites Col. 1:60-63 of Mimura as disclosing “storing the extracted data from the received packets of interest into a Management Information Base [MIB].”

Applicants respectfully disagree with this interpretation and would like to point out that, in reality, Col. 1:60-63 recites “[s]tatistics data obtained **by observing the above items** is stored into a Management Information Base (MIB) for storing management information, provided on each packet switch” (emphasis added). In accordance with the Mimura specification, the phrase “the above items” refers to “items representing traffic particulars, such as the number of packets received, the count of bytes received, the number of packets transmitted, and the count of bytes transmitted” (Mimura, Col. 1:54-57). Therefore, “statistics data obtained by observing the above items” as described by Mimura **does not** correspond to “statistic information of the pattern extracted from the received packets” as recited in claim 1.

Accordingly, Mimura fails to teach or suggest at least the feature of “a third step of storing statistic information of the pattern extracted from the received packets, when the pattern extracted from the received packets matches the retrieval pattern set in the table.”

On page 5 of the Office Action, the Examiner argues that:

... Mimura et al., as modified by Wakayama et al., do not explicitly disclose that ***the packet type, the pattern extraction position and the retrieval pattern are being selected*** in accordance with a user policy. Although Mimura et al. do disclose a “best effort” policy for QoS performance that can also include user-specified monitoring and filtering criteria for the incoming packets.

In the same field of endeavor, Na et al. show and disclose the claimed method, wherein ***the packet type, the pattern extraction position and the retrieval pattern are being selected*** in accordance with a user policy (Fig. 2 which shows the: retrieval patterns [first three columns] being selected based on user-specified policy identified in the last column; Fig. 3 that shows pattern extraction position of the fields shown in columns 1-3 of Fig. 2; and Fig. 14 that shows a packet type [based on protocol type shown in column 6, e.g. TOP, UDP, or any other protocol] associated with a user policy A-D listed in column 1; paragraphs 0011-0012, 0037, 0040 disclose the same details).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to select the packet type, the pattern extraction position and the retrieval pattern in accordance with a user policy, as taught by Na et al., in the method of Mimura et al., as modified by Wakayama et al., so as to select the incoming packets for extraction of statistical data based on the criteria specified in the user policy.

The Examiner admits that Mimura nowhere describes the “user-specified monitoring and filtering criteria,” but points to Na for support. However, while Na arguably includes description related to the terms “the packet type,” “the pattern extraction position,” and “the retrieval pattern,” Na nevertheless fails to disclose the features of claim 1 as referenced by the Examiner. In fact, Applicants respectfully submit that the Examiner has misrepresented Na’s Figs. 2, 3 and 14 (reproduced above) thereby, forcibly relating them to claim 1. To that end, Applicants have searched and are unable to find any disclosure of the packet type, the pattern extraction position and the retrieval pattern being selected in ***accordance with a user policy***. Accordingly, because the Examiner has failed to accurately articulate the portions of Na that allegedly disclose this feature, apart from merely identifying figures, Applicants request that Examiner state where, precisely, this feature is disclosed in the Na reference.

Furthermore, in the *Response to Arguments* portion of the final Office Action, the

Examiner argues as follows:

On page 6 of the remarks section, the applicant argues that the “best effort” disclosed by Mimura et al. is based on a network provider’s policy and not a user policy, as recited in claims 1 and 8. In response, the examiner would like to state that the “best effort” portion of the policy relates to QoS only. There are other considerations, such as monitoring and filtering of the incoming packets, wherein **a user specified criteria** may be implemented as a user policy. For the amended claims 1 and 8, the selection of the packet type, the pattern extraction position and the retrieval pattern according to a user policy is further shown and disclosed in the newly cited reference of Na et al. (emphasis added)

As discussed above, Mimura nowhere describes the “user-specified monitoring and filtering criteria” as argued by the Examiner. The Examiner further argues as follows:

On page 7 of the remarks section, the applicant argues that “extracting a retrieval pattern” is nowhere taught or suggested in Mimura et al. reference. The examiner would like to point to column 2, lines 43-47 of Mimura, which teach that “According to the result of this judgment, communication flow monitoring is performed and statistics data thereof is acquired. In this way, it can be implemented to monitor traffic and acquire detailed statistics data for each communication flow.”

The highlighted text above acquires [i.e. extracts] detailed statistics data [i.e. retrieval pattern] for each communication flow.

However, Mimura discloses that the detailed statistics data is acquired as a result of monitoring. Therefore, even if the detailed statistics data corresponds to the retrieval pattern as interpreted by the Examiner, the detailed statistics data is not extracted from the received packets as recited in claim 1. The Examiner further argues as follows:

Also on page 7, the applicant further argues that the examiner has remained silent on the feature of “based on the pattern extraction position set in the table”. The examiner respectfully disagrees. This claimed feature is shown and disclosed by the cited Wakayama et al. reference in Fig. 13 and that lists relative positions of TOS [Type Of Service], Protocol, Source IP address and Destination IP Address at offsets 1, 5, 11 and 15 from the beginning [offset 0] of the IP header 610, as well as Source Port and Destination Port at offsets 0 and 2 from the beginning [offset 0] of the TCP header, Similar details are also shown in Fig. 3 and disclosed in paragraph 0040 of Na et al. reference.

All of the portions referenced to by the Examiner merely show header formats but fail

to show the description of “the pattern extraction position set in the table”. The Examiner further argues as follows:

On page 8 of the remarks section, the applicant further argues that Mimura reference fails to teach “storing statistic information of the pattern extracted from the received packets, when the pattern extracted from the received packets matches the retrieval pattern set in the table”. The examiner would refer the applicant to column 1, lines 60-63. which disclose that “Statistics data obtained by observing the above items is stored into a Management Information Base (MIB) for storing management information, provided on each packet switch.”

As described above, the “statistic data obtained” refers back to “items representing traffic particulars, such as the number of packets received, the count of bytes received, the number of packets transmitted, and the count of bytes transmitted” (Mimura, Col.1:54-57). Therefore, “statistic data obtained by observing the above items” as described by Mimura does not correspond to “**statistic information of the pattern extracted from the received packets**” recited in claim 1.

The Examiner finally argues that “[t]he remaining argument of page 9 is covered in the new Na et al. reference.” Applicants question the Examiner’s reliance on Na, which merely uses the term “policy,” and its application to the claims of the present invention.

Applicants submit that Na nowhere discloses the features described above as interpreted by the Examiner. More egregiously, the Examiner has failed to provide the required clear statement of the reasons why the claimed invention would have been obvious. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007). The analysis must be made explicit. The Federal Circuit has stated that “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). *See also KSR*, 82

USPQ2d at 1396. Therefore, it is respectfully submitted that there is no obviousness in combining Mimura and Wakayama in order to achieve the above-mentioned object of the present invention as motivation.

As has been noted before, according to Mimura on column 6, lines 1-3, conditions for identifying communication flows are assumed to have been registered **beforehand** in the flow table 4, and therefore **cannot be selected in accordance with a user policy**. Accordingly, Claims 1 and 8 of the present invention cannot be achieved by combining Mimura and Wakayama. Independent device claim 8, which corresponds to independent method claim 1, as well as dependent claims 2, 7, 9, and 14 (depending from independent claim 1 or 8), are also believed to be allowable for the same reasons set forth above.

Therefore, it is respectfully submitted that the claimed features of the present application are nowhere disclosed by the cited art, whether that art is taken individually or in combination. For at least these reasons, Applicants respectfully submit that the rejections are improper and should be withdrawn.

In view of the above, it is believed that this application is in condition for allowance, and a Notice thereof is respectfully requested. All correspondence should continue to be directed to our address of record.

Respectfully submitted,

/Michael S. Tomsa /  
Agent for Applicants  
Michael S. Tomsa  
Registration No. 64,264

KATTEN MUCHIN ROSENMAN, L.L.P.  
CUSTOMER NUMBER 026304  
Docket No.: FUJZ 22.365 (100794-01037)